

Chairman Jack Van Coevering's
Opening Statement to the Senate Finance Committee

Madame Chair and members of the Committee, thank you for the opportunity to appear before you today to discuss the Michigan Tax Tribunal.

My name is Jack Van Coevering. I was appointed Chairman of the Michigan Tax Tribunal in August of 2003 and was unanimously confirmed by the Michigan Senate. I am attorney, having practiced law in Michigan for 19 years. Over 12 of those years have been in the area of state and local tax. Before my appointment I worked for the Engler administration as the Administrator of the Department of Treasury's Legal Division. I came to the Department after a serving as an Assistant Attorney General under Attorneys General Granholm and Kelley.

Immediately after my appointment as Chair of the Tribunal, I heard from practitioners who represented the interests of taxpayers before the Tribunal. They expressed concerns about Tribunal operations. To learn more about their concerns, I met with about 20 practitioners. They asked that no one else from the Tribunal attend the meeting because they feared reprisal. As a result of that meeting, I decided to implement an open door policy so that anyone doing business with the Tribunal could present concerns or make suggestions about Tribunal operations. We also now maintain regular communications using an e-mail ListServ and implement suggestions from taxpayers using administrative statements known as Tribunal Notices. Both the Notices and the ListServ are publicly available on the Tribunal's website.

These initial discussions were eye-opening, but they did not fully prepare me for the administrative challenges I would encounter during my first few months as Chair.

Shortly after arriving at the Tribunal, I was shocked to discover that the agency had no method for effective legal research because it lacked up-to-date copies of Michigan appellate cases and current versions of the Michigan Compiled Laws. I learned why when the Tribunal received a complaint from the Thomson West Publishing Company and a summons to appear in a Minneapolis court. Under the prior administration, the Tribunal had failed for the preceding two years to make any payment for legal research resources. As a result, I worked with the Department of Attorney General to settle the complaint.

In addition to unpaid bills, this one and many others, I encountered another law suit. Under the prior administration, the Tribunal had failed to comply with the Open Meetings Act. Working again with counsel at the Department of Attorney General, I settled the lawsuit against the Tribunal for its violation of the Open Meetings Act.

In addition to these inherited legal problems, I also was confronted with computers that were so old parts no longer existed to repair them. On two separate occasions operations at the Tribunal were shut down due to computer failure. Despite limited budget resources, the computers have been replaced.

I next had to deal with a with a Tribunal member, appointed by the prior administration, with a serious backlog of cases. I discovered that the lack of productivity was caused by the member's participation in Internet gambling while at the Tribunal. I again consulted with the Department of Attorney General and advised the Governor's office of this inappropriate use of state resources. Governor Granholm's office indicated that I should inform the member that she could either resign or the Governor's office would initiate public legal proceedings to remove the member from office. The member resigned.

When I reviewed the Tribunal's docket, I learned of a case involving Branford Townhouse Cooperative that had languished at the Tribunal for 18 years without activity. Again, we went to work, heard the case, and issued a final decision in 2005.

Languishing cases apparently was a problem under the prior administration, as I learned from an attorney employed by Dow Chemical Company early in my tenure as Chair. The attorney indicated that Dow's pending appeal had sat at the Tribunal without any action for over 6 years. Upon further investigation, I discovered that over 80 motions were pending in the case with no response from the Tribunal. Similar lack of attention had been given to appeal by Dow Corning also before the Tribunal. I found such inaction completely unacceptable. I immediately instituted measures to get both the Dow Chemical and the Dow Corning appeals moving. The Dow Corning case was resolved in 2004. A significant portion of the Dow Chemical litigation was resolved in 2005.

The remainder of the Dow Chemical case was assigned to a three-judge panel. Tribunal member Michael Stimpson was designated as presiding member. Consistent with the statutory duty of the Tribunal Chair to assign matters and apportion the business of the Tribunal, I discussed the Dow Chemical case with Mr. Stimpson, as I had done with other members. We agreed that the first phase of the Dow Chemical case would be completed in April 2006. That deadline was missed as were many other deadlines contained in two scheduling orders issued by the panel in the case. I found the lack of productivity and missed deadlines unacceptable. As a result, in May of 2006, under the authority of sections 23 and 34 of the Tax Tribunal Act, I assigned the role of presiding member to Mr. Gilbreath. Mr. Stimpson objected but conceded that the chair had authority to apportion the business of the Tribunal and make the assignment.

On June 20, 2006, based upon the Chair's statutory authority, I removed Tribunal members Lohmeier and Stimpson from the Dow Chemical case. Both had prepared and had attempted to issue an order in the case addressing only one party's motion without having received the opposing party's response. Indeed, they sought to issue the order before the scheduled due date for response. Moreover, they prepared the order without discussing it with the third member of the panel—the panel's only attorney member. Instead, members Stimpson and Lohmeier indicated to the third member that he was not permitted to prepare a written dissent, that they would not discuss the order with him and insisted that he sign the order within fifteen minutes or that the order would be issued without his signature. The order itself contained their signatures but did not contain any space for the third member's signature. I determined that the two members had violated

fundamental standards of professional and judicial conduct and that their removal was required under Rule 140 as they were unable to perform their duties. The terms of members Stimpson and Lohmeier subsequently expired.

After the departure of Tribunal members Stimpson and Lohmeier their computers were examined to retrieve documents regarding pending litigation. Missing from the electronic records were any purported working drafts in the Dow Corning case. In apparent violation of state record retention laws, Mr. Lohmeier's hard drive contained no electronic documents for any of his pending small claims decisions and prehearing orders, all of which had to be either retyped from unedited hard copy drafts or will now have to be reheard. Also missing from Mr. Stimpson's records were a number of Tribunal files regarding productivity and case assignment for the period during which Mr. Stimpson served as Tribunal Chair.

I am dismayed by the actions of these two former members.

The Michigan Tax Tribunal has worked very hard over the last three years to be responsive to taxpayer concerns, to understand their criticism, to find solutions, to inspire their trust. The Tribunal was the first state tax court in the country to offer its docketing records on a publicly-accessible website and to craft a ListServ informing taxpayers of recent developments. We have eliminated fees in a number of areas and have reduced the need for motions. We have worked to establish and maintain a dispute resolution process that is reliable and that follows well-established legal processes. We have worked to streamline the Tribunal process to increase its productivity and have set the second, third, and fourth records for the highest number of closed Entire Tribunal cases in the Tribunal's thirty-year history. The total number of Entire Tribunal cases disposed of by the Tax Tribunal is now up over 60%. This year they are up over 90% (3,200 from the seven year average of 1,554). We have actively pursued partnerships with educational institutions and professional and business organizations. We have actively reached out to taxpayer groups and regularly provide educational materials and updated information on our website. That process is working.

Sometimes people react negatively to change, but I believe that the results at the Tax Tribunal under the current administration speak for themselves.

Members of the Tax Tribunal are proud of the difference we have made for Michigan taxpayers. We are also the first to acknowledge that there is much more work to do. But we also believe in the path that we are on: namely, the judicious and expeditious resolution of matters before the Tax Tribunal in manner consistent with the law as written by the Legislature.

I welcome your questions.